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THE HAGUE FOR CWC DEL

E.O. 12958: DECL: 02/01/2020
TAGS: CBW KTIA PARM PREL UK OPCW CWC
SUBJECT: CHEMICAL WEAPONS CONVENTION: HOST COUNTRY
AGREEMENT WITH THE UNITED KINGDOM ON CHALLENGE
INSPECTIONS (SBU)

REF: STATE 060625

Classified By: ISN/CB Office Director Robert Mikulak.
Reason: 1.4 (b) and (d).

¶1. (U) Action Request in Paragraph 8.

OBJECTIVE

¶2. (C-REL U.K.) Department requests Embassy to pursue the following objective:

-- Work with the Government of the United Kingdom to finalize an exchange of letters to clarify differing interpretations of our 1997 Host Country Agreement (HCA) Memorandum of Understanding (MOU) on the conduct of Chemical Weapons Convention (CWC) challenge inspections.

REPORTING DEADLINE

¶3. (U) Embassy should report results of discussions with British officials by cable to ISN/CB) Eugene Klimson by 12 February, 2010 or at (202) 647-5165 or via email with any questions or for any further background information.

BACKGROUND

¶4. (C-REL U.K.) The United States and the United Kingdom concluded a CWC Host Country Agreement (HCA) in 1997. Following U.S. participation in a U.K. challenge inspection exercise, the United States and United Kingdom initiated a dialog regarding the differing interpretations of the HCA, and agreed to negotiate an exchange of letters (reftel).

¶5. (C-REL U.K.) Several exchanges regarding the differing views took place, and in December 2008, Clive Rowland, of the U.K.'s Office of Counterproliferation and Arms Control within the Ministry of Defense, provided a letter, dated November 25, 2008, to Dr. Deborah Ozga of the U.S. Joint Staff containing comments on the U.S. draft letter of February 2008. The USG has reviewed the letter, held subsequent discussions on the margins of the CWC Executive Council meetings in 2009, and drafted a formal response below.

¶6. (C-REL U.K.) During the discussions, the United States suggested that in view of the difficulties concerning the sampling issue, the two sides continue to work that issue, but go forward on the exchange of letters since all other outstanding issues have been resolved. The United States also proposed that contact information be exchanged for making initial notifications that a challenge inspection is

called involving the other Participant's assets. The United Kingdom agreed to the U.S. proposal.

¶7. (C-REL U.K.) Washington is eager to finalize the exchange of letters if the U.K. accepts the current U.S. proposal. Washington seeks post to deliver the cover letter and current U.S. proposed text attached below. (The new U.S. proposed text is in brackets.)

Action Request

¶8. (C-REL U.K.) Post is requested to contact appropriate U.K. officials to deliver the talking points in paragraph 9 and the letter and draft annex in paragraphs 10 and 11.

Talking Points

¶9. (C-REL U.K.) Talking points for the Government of the United Kingdom:

(Begin talking points.)

- The United States appreciates U.K. efforts to resolve outstanding issues related to the implementation of our 1997 Memorandum of Understanding (MOU) on the conduct of Chemical Weapons Convention (CWC) challenge inspections involving our two countries.

- Based on the letter, dated November 25, 2008, provided by Mr. Clive Rowland to Dr. Deborah Ozga of the Joint Staff in December 2008 and subsequent discussions between the U.S. and U.K. representatives on the margins of the CWC Conference of the States Parties Meeting in The Hague, we have prepared comments to the U.K. proposals contained in the December 2008 letter.

- As discussed in The Hague, we have added text for the continuation of sampling discussions upon formalization of this exchange of letters.

- Also per our discussions, we have added text concerning exchanging initial Point of Contact information to be used if a Challenge Inspection is called involving both of our assets. Changes to the original text are noted by brackets.

- We believe the time is ripe to formalize the understandings that have been achieved over the past few years of discussions and look forward to finalizing our letters of exchange.

(End talking points.)

¶10. (C-REL U.K.) U.S. response to U.K. letter for delivery:

(Begin draft text of letter.)

Chemical Weapons Convention (CWC): Implementation of Challenge Inspections under the 1997 Memorandum of Understanding (MOU): U.S. response to U.K. Letter dated November 25, 2008.

Introduction:

The United States appreciates the United Kingdom's efforts to negotiate an exchange of letters to clarify differing interpretations of our 1997 Chemical Weapons Convention (CWC) Challenge Inspection Host Country Agreement (HCA), and its recent written response, dated November 25, 2008 to Dr. Deborah Ozga of the Joint Staff, U.S. Department of Defense. The numbering of our response corresponds to the numbering in your letter, and we have added an additional Item (Item 8) listing points of contact.

We believe the attached Annex) with the few exceptions

listed below) represents the understandings we have achieved during our discussions over the past several years. If the United Kingdom agrees, including to the few new changes proposed by the United States, we believe that this Annex (once the United Kingdom furnishes the Point of Contact information requested in new Item 8) could form the basis for the exchange of letters both sides have sought.

Comments on the Annex are as follows:

Item 1: Determining Acceptable Inspectors

The United States regrets that the phrase &subject to the changes below8 caused confusion when placed under Item 11. Our intent was to note that the document had been through several rounds of discussions, both formal and informal, and that all of the changes (throughout the document, not just in Item 1) were applicable. However, our placement of that language under Item 1 could lead to the conclusion that &subject to the changes below8 applies only to Item 1. We believe that all of the changes proposed and acceptable by both sides are now reflected in the annex) accordingly, &subject to the changes below8 is not necessary.

Item 2: Requesting State Observer (RSO)

The United States welcomes the U.K. proposal to hold an informal dialogue on the handling of the Requesting State Observer in order to share lessons learned, understand each others, procedures and identify likely problem areas. We suggest that such dialogue occur on the margins of the &close allies8 meeting scheduled to take place during summer 2010 in Washington.

Item 3: Managing Inspection Preparation Time

Issue 2: 108 Hours

The United States can accept the U.K. amendments with the additional change to read as follows:

"The participants will consult to determine a suitable handling and presentation strategy that addresses public and media relations and that reflects the national positions and interests and priorities of both the United States and United Kingdom. This will focus on the need to demonstrate compliance with the CWC expeditiously (begin bracketed text) while allowing both participants to exercise their rights as necessary to safeguard their national security (end bracketed text)."

Item 6: Public Affairs

The phrase &to develop a joint8 was inserted in the first sentence for clarity.

Item 7: Laboratory Analysis Samples

The United States believes that more discussion will be required to reach consensus on this issue and proposes that the current understandings on all other items be finalized with the understanding that further discussions will continue to resolve this matter.

Additional Item: Item 8: Point of Contact

The United States recommends that initial Points of Contact should be exchanged to enable expedient exchange of critical data during a challenge inspection. Therefore, the United States has added the following text:

For the purpose of implementing paragraph III.B.1 of the MOU, the United Kingdom should as an initial point of contact inform the United States of a challenge inspection at the United States Nuclear Risk Reduction Center (telephone 1 202-647-9166, fax 1-202-647-4892) and the United States European Theater Command Center (49-711-680-5064, fax 49-711-680-5064). The United States should inform the

United Kingdom at (tel., fax to be filled in by the United Kingdom).

(End of Text.)

¶11. Draft Letter of Exchange for delivery.

(Begin Text.)

Annex

Understanding between the Governments of the United States of America and the United Kingdom Regarding the Memorandum of Understanding between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning the Conduct of Certain Challenge Inspections Pursuant to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, dated December 5, 1997, hereinafter referred to as the "MOU."

The United States and the United Kingdom hereinafter referred to as "the participants," have reached the following understandings regarding implementation of the MOU:

Item 1: Determining Acceptable Inspectors

With respect to Part III, A.1. of the MOU, the participants, in all applicable situations, will inform the inspection team during the pre-inspection briefing if U.S. assets are within the inspectable area and, as a result, will inform the team that U.S. considerations must be applied in determining access to those assets.

The participants expect the Technical Secretariat to ensure, consistent with paragraph 2 of Part II of the Verification Annex that no inspector that is unacceptable to the United States will participate in inspection activities of an asset (begin added text) of the United States (end added text) or (begin added text) a (end added text) facility under U.S. control. Failing this, consistent with the managed access provisions in Part X of the Verification Annex, particularly paragraphs 41 and 48, the United States will only allow individual inspectors that have been accepted by the United States, or sub-teams consisting only of accepted inspectors, access to U.S. assets (begin added text) and facilities (end added text).

In those situations where it can be reasonably established from the inspection request that U.S. assets are likely to be within the requested perimeter, the participants will jointly remind the Technical Secretariat regarding U.S. sensitivities in this regard prior to the arrival of the inspection team at the Point of Entry (POE) (begin deleted text) unaware of the presence of U.S. assets within the requested perimeter (end deleted text).

Item 2: Requesting State Observer (RSO).

With respect to Part III, A.2. of the MOU, the participants will consult on whether or not to accept the RSO and, as far as possible, (begin added text) agree (end added text) (begin deleted text) decide (end deleted text) on an (begin deleted text) agreed (end deleted text) approach to managing the RSO during the challenge inspection. If the RSO is unacceptable to one of the participants, options such as designation of an observer from a third country or acceptance of the RSO by one participant and use of managed access (begin added text) with regard to (end added text) (begin deleted text) around (end deleted text) the (begin deleted text) other's (end deleted text) assets (begin added text) of the other participant (end added text) should be explored.

Item 3: Managing Inspection Preparation Time.

Issue 1: Equipment and POE Activities.

With respect to Part III, B.3. and 4., and Part III, C.3. and

¶4. of the MOU, the participants will ensure that if the assets of one participant are involved in an inspection where the other participant is the inspected State Party, the other participant will be allowed to conduct its own inspection of the inspection team's equipment and the participants will (begin added text) jointly ensure that (end added text) (begin deleted text) make clear (end deleted text) this requirement for review by both participants to the inspection team.

In addition, if different methodologies regarding POE activities create a situation in which the inspected State Party believes that it is necessary to commence the inspection, the inspected State Party will ensure that the other participant's assets are not inspected or monitored until such time as (begin added text) assets of (end added text) the other participant (begin deleted text) 's assets (end deleted text) have been prepared for inspection within the period permitted in the Convention.

In the event of a delay in agreeing to the final perimeter, the participants will consult to determine the best way to conduct exit monitoring (begin added text) so that (end added text) (begin deleted text) of (end deleted text) all inspectable vehicles (begin added text) will exit (end added text) (begin deleted text) exiting (end deleted text) the requested perimeter as soon as possible and not later than 12 hours after the inspection team's arrival at the POE.

Issue 2: 108 Hours.

With respect to Part V, B.1. of the MOU, both participants will be allowed up to 108 hours, if necessary, to prepare their assets for the inspection, pursuant to Part V, B.1. of the MOU. If the inspected State Party determines that its assets are prepared prior to those of the other participant, the inspected State Party may make its assets available to the inspection team for inspection so long as the (begin added text) assets of the (end added text) other participant (begin deleted text) 's assets (end deleted text) are not affected in any way.

The participants will consult to determine a suitable handling and presentation strategy that addresses public and media relations and that reflects the national positions and interests and priorities of both the United States and United Kingdom. This will focus on the need to demonstrate compliance with the CWC expeditiously (begin bracketed text) while allowing both participants to exercise their rights as necessary to safeguard their national security (end bracketed text).

Item 4: Managing Access

Issue 1: Perimeter Negotiations

With respect to Part IV, A., B., and C. of the MOU, the participants will consult on a joint approach to perimeter negotiations. Both participants (begin added text) will (end added text) (begin deleted text) should (end deleted text) be involved in these negotiations if assets of both countries are included or adjacent to the requested perimeter, or if, pursuant to Part IV, B.1., it cannot be determined whether an asset of the United States is included within the inspectable area.

Issue 2: Ships and Aircraft

The participants will consult promptly in the event of a challenge inspection to determine whether any U.S. sovereign warships or aircraft are in the affected area. If this is the case, the participants would jointly inform the Director General of the OPCW that the United States would need to be designated as the inspected State Party for such vessels or aircraft. If this request is denied, the participants should consult on methods to demonstrate compliance.

U.S. military and other state ships and aircraft, including

some vessels and aircraft that are operated and used at the time exclusively for government noncommercial service, enjoy sovereign immunity. Aircraft, vessels, or land vehicles for which the United States is not asserting sovereign immunity are defined as inspectable assets.

Issue 3: Overflights. The participants will consult on the provision of aerial photographs to the inspection team as well as the offering of any aerial overflight of the inspected site, where US assets are included, or where such provision may impact or compromise preparations to receive the challenge inspection.

Item 5: Intellectual Property (IP) and Documentation

The participants understand that the definition of asset in Part I, paragraph 2 of the MOU does not extend to documentation or intangible technology and that existing procedures already in place will be used to ensure appropriate protection of documentation and intangible technology.

Item 6: Public Affairs

Pursuant to Part VII of the MOU, the participants will consult (begin bracketed text) to develop a joint (end bracketed text) public affairs and media handling strategy for the conduct of the challenge inspection. This (begin added text) will include (end added text) (begin deleted text) would cover (end deleted text) public statements, joint or independent, identification of contact points on site and in capitals, dealing with media requests for interviews or television footage etc. and how best to handle any areas where our respective national positions differ.

Item 7: Sampling and Analysis

The United States and United Kingdom will continue to (begin added text) seek (end added text) (begin deleted text) work on toward finding (end deleted text) a common understanding on procedures for handling the analysis of samples taken during a challenge inspection.

Item: 8: Points of Contact

For the purpose of implementing paragraph III.B.1 of the MOU, the United Kingdom should as an initial point of contact inform the United States of a challenge inspection at the United States Nuclear Risk Reduction Center (telephone 1 202-647-9166, fax 1-202-647-4892) and the United States European Theater Command Center (49-711-680-5064, fax 49-711-680-5064). The United States should inform the United Kingdom at (tel., fax to be filled in by the United Kingdom).

(End of Text.)
CLINTON